Supreme Court, U.S.
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No. 111, Original

In the Supreme Court of the United States

October Term, 1991

STATE OF DELAWARE,
Plaintiff,
STATE OF TEXAS,
Plaintiff-Intervenor,
COMMONWEALTH OF MASSACHUSETTS,
Intervenor,
v.
STATE OF NEW YORK,
Defendant.

COMMONWEALTH OF MASSACHUSETTS' INTRODUCTION TO FIRST AMENDED COMPLAINT AND FIRST AMENDED COMPLAINT

COMMONWEALTH OF MASSACHUSETTS
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June, 1993

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COMMONWEALTH OF MASSACHUSETTS'
INTRODUCTION TO FIRST AMENDED COMPLAINT

On March 30, 1993, this Court issued its opinion in the above- referenced case and remanded the case to the Special Master, Thomas H. Jackson ("Special Master"), for further proceedings consistent with the Supreme

Court's opinion and for the preparation of an appropriate decree.

At a status conference in the above-referenced case in Charlottesville, Virginia, on June 2, 1993, the Special Master heard oral argument on the future course of the litigation in this case.

Subsequent to the status conference, the Special Master issued Litigation Management Order No. 6 ("Order"). In the Order, the Special Master allowed "leave to all parties to amend their pleadings now that the Supreme Court has ruled on the issues presented in the prior Report." Litigation Management Order No. 6, dated June 8, 1993, p. 4.

Pursuant to the Special Master's Order, the Commonwealth of Massachusetts ("Massachusetts") hereby files its First Amended Complaint. If, however, the

Court determines that Massachusetts requires leave from this Court to file its First Amended Complaint, Massachusetts hereby requests that the Court grant it leave to file its First Amended Complaint.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

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Dated: June 29, 1993

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COMMONWEALTH OF MASSACHUSETTS'
FIRST AMENDED COMPLAINT

I. JURISDICTION

1. This Court has original jurisdiction over the present parties pursuant to Article III, Section 2, and Section 1251(a) of Title 28 of the U.S. Code.

II. THE PENDING ACTION

2. On May 31, 1988, the Court granted the State of Delaware leave to bring this action against the State of New York regarding which state is entitled to claim and take possession of certain unclaimed intangible property. This unclaimed intangible property consists of dividends, interest, and other distributions arising out of security transactions that are held by securities brokers incorporated in Delaware.

3. On December 12, 1988, the Court appointed a special master for the dispute.

4. On February 21, 1989, the Court granted the State of Texas' motion to file a complaint in intervention that broadened the property in dispute to

include dividends, interest, and other distributions held by Depository Trust Corporation or Cede & Co., which have not been claimed by brokerage and bank members of the Depository Trust Co.

5. Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the District of Columbia have filed motions to intervene accompanied by

complaints in intervention. Some of these complaints would expand the scope of litigation to include unclaimed intangible property held by brokerage firms, wherever incorporated.

6. On January 28, 1992, the Special Master issued a report with his recommendations to the Supreme Court. The Master recommended that all applications for intervention filed prior to the Supreme Court's final decree be granted.

7. On March 30, 1993, the Supreme Court delivered an opinion in this case ruling that the state in which the intermediary is incorporated has the right to escheat funds belonging to beneficial owners who cannot be identified or located.

8. On March 30, 1993, the Supreme Court granted all pending motions to intervene, including Massachusetts' Motion For Leave to File Complaint in Intervention, and remanded this case to the Special Master.

9. On June 8, 1993, the Special Master issued Litigation Management Order No. 6, allowing plaintiff and any intervening parties to file amended pleadings within 30 days of the Order.

III. THE COMMONWEALTH OF MASSACHUSETTS

10. The Commonwealth of Massachusetts in this action acts by and through the Attorney General of Massachusetts, the official of the Commonwealth of Massachusetts exclusively authorized under the laws of

the Commonwealth to represent the Commonwealth in litigation. Mass. Gen. Laws c. 12, §3.

IV. CLAIM BY THE COMMONWEALTH OF MASSACHUSETTS

11. Under the principles of law enunciated in Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972), the Commonwealth of Massachusetts is entitled to share in the remedy fashioned by the Supreme Court in this case and to claim an undetermined portion of unclaimed distributions held by the State of New York.

12. "Unclaimed distributions" are those distributions held by the State of New York where either the identity of the owners or their last known addresses are unknown.

13. Since about 1975, New York has escheated unclaimed distributions whose beneficial owners are unknown or whose addresses are unknown, from brokerage firms and/or other intermediaries incorporated in Massachusetts.

14. First Boston Corporation and Tucker Anthony, Inc. are two corporations incorporated in Massachusetts that have reported and paid substantial amounts of unclaimed distributions to New York since 1975.

15. Pursuant to the Supreme Court's ruling in this case, and the Massachusetts' Abandoned Property statute, G.L. c. 200A, Massachusetts is entitled, as the state of incorporation of Massachusetts brokerage corporations, to recover from New York all unclaimed distributions that have heretofore been

paid over or transferred to New York by them, including 12% per annum interest on such funds from the date such funds should have been paid or delivered.

16. WHEREFORE, the Commonwealth of Massachusetts requests:

a. that judgment be entered against the State of New York that unclaimed distributions held by Massachusetts' Brokerage Corporations and other intermediaries are subject only to escheat by Massachusetts, under the Massachusetts Abandoned Property Act and other applicable principles of law;

b. a judgment against the State of New York for unclaimed distributions to which the Commonwealth of Massachusetts is

entitled but that have previously been seized by the State of New York, plus interest at the rate of 12% per annum as specified by the Massachusetts Abandoned Property Act G.L. c. 200A §12(e);

c. that New York be directed to pay or deliver to Massachusetts all unclaimed distributions paid or delivered to New York by Massachusetts Brokerage Corporations or other Massachusetts intermediaries, which should have escheated to Massachusetts under its Abandoned Property Act plus interest at the rate of 12% per annum on such funds from the date such funds should have been paid or delivered; and

d. for such further relief as this Court deems just.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

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Dated: June 29, 1993